No. 947

In the Supreme Court of the United States

OCTOBER TERM, 1941

M. HAMPTON MAGRUDER, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MARYLAND, PETITIONER

v.

FREDERICK M. SUPPLEE AND ELIZABETH G. SUPPLEE, HIS WIFE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

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The Solicitor General, on behalf of M. Hampton Magruder, Collector of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fourth Circuit entered in the above cause on November 12, 1941, affirming the decision of the District Court of the United States for the District of Maryland.

OPINIONS BELOW

The opinion of the District Court (R. 14–25) is reported at 36 F. Supp. 722. The opinion of the

Circuit Court of Appeals (R. 28) is reported at 123 F. (2d) 399.

JURISDICTION

The judgment of the Circuit Court of Appeals (R. 29) was entered on November 12, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The respondents purchased real estate and thereafter paid the local property taxes which had previously accrued as a personal liability against the vender and for which a lien had attached prior to sale. May the respondents deduct any portion of those property taxes from their gross income under Section 23 (c) of the Revenue Act of 1936, or must the payment of those taxes be treated as part of the cost of the property?

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*, pp. 8–11.

STATEMENT

The facts, as stipulated and as set forth in the opinion of the District Court (R. 15–16), may be summarized as follows:

The respondents purchased various parcels of real estate in Baltimore, Maryland, during the years 1936 and 1937. At the time of each purchase local real estate taxes for the calendar year

in question had already accrued. These taxes were thereafter paid in full by respondents. The respondents, however, had entered into arrangements with their vendors that there was to be a downward adjustment in the purchase price equal to the portion of the tax allocable to the period prior to purchase.

The question herein is whether respondents may deduct from their gross income the portion of those real estate taxes allocable to the period after purchase. The Commissioner refused to permit such deductions on the ground that the local taxes for the entire calendar year had already accrued against respondents' vendors in each instance and that respondents' payment of such taxes merely constituted part of the cost of the property, no part of which could be deducted from current gross income. Respondents thereupon brought suit for refund in the District Court, which ruled in their favor, and the court below affirmed.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the taxpayers were entitled to deduct as taxes paid or accrued within the years the sums paid to the local taxing authorities.

2. In holding that the payments involved herein were properly designated as taxes rather than capital expenditures constituting part of the purchase prices of the properties.

3. In failing to hold that the taxpayers were not entitled to deduct the sums paid to the local taxing authorities in discharge of the tax liability on the property purchased during the tax years.

4. In affirming the decision of the District Court.

REASON FOR GRANTING THE WRIT

The question whether a purchaser of real estate may deduct local property taxes paid during the year of purchase has long been a troublesome one in the administration of the revenue laws. In attempting to solve the problem the Treasury has adopted as its guiding principle the statement in the regulations that "* * * In general, taxes are deductible only by the person upon whom they are imposed * * *." Regulations 94, Article 23 (c)–1. When the local taxes are "imposed" upon the vendor, the Treasury has disallowed the deduction to the vendee, even though the vendee has paid the taxes pursuant to agreement with the vendor; in that situation the payment of the local taxes is regarded by the Treasury simply as an additional element of cost of the property to the vendee. And it has treated the local taxes as being "imposed" upon the person who owned the property at the time of assessment.[1] The

[1] The refusal of some courts to accept these basic principles has led to a confusing pattern of informal rules. See I. T. 3527, 1942–4 Int. Rev. Bull. 3; G. C. M. 22613, 1941–1 Cum. Bull. 301; G. C. M. 18929, 1937–2 Cum. Bull. 91; G. C. M. 15305, XIV–2 Cum. Bull. 80 (1935); G. C. M. 3667, VIII–2 Cum. Bull. 94 (1929).

decisions of the lower courts and the Board of Tax Appeals, however, have been in hopeless confusion [2] and they have often paid but scant attention to the regulations and the Treasury practice.

In view of the comparative unimportance of the issue on the merits the Government has hitherto refrained from asking this Court to review the question, hoping that it might ultimately be satisfactorily clarified by the lower courts. However, the decisions of the lower courts have become increasingly confusing and have proceeded upon conflicting theories. In the circumstances, the Government believes it to be essential to the orderly administration of the revenue laws that the controlling principles be authoritatively laid down by this Court.

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[2] See, for example, *Commissioner* v. *Rust's Estate*, 116 F. (2d) 636 (C. C. A. 4th); *Commissioner* v. *Coward*, 110 F. (2d) 725 (C. C. A. 3d); *Lifson* v. *Commissioner*, 98 F. (2d) 508 (C. C. A. 8th), certiorari denied, 305 U. S. 662; *Walsh-McGuire Co.* v. *Commissioner*, 97 F. (2d) 983 (C. C. A. 6th); *Hord* v. *Commissioner*, 95 F. (2d) 479 (C. C. A. 6th); *Parrott Estate Co.* v. *McLaughlin*, 89 F. (2d) 188 (C. C. A. 9th); *Merchants Bank Bldg. Co.* v. *Helvering*, 84 F. (2d) 478 (C. C. A. 8th); *Falk Corp.* v. *Commissioner*, 60 F. (2d) 204 (C. C. A. 7th); *Commissioner* v. *Plestcheeff*, 100 F. (2d) 62 (C. C. A. 9th); *United States* v. *City of Buffalo*, 54 F. (2d) 471 (C. C. A. 2d), certiorari denied, 285 U. S. 559; *Securities Company of Milwaukee* v. *United States* (E. D. Wis.), decided December 10, 1936, not officially reported, appeal dismissed, 91 F. (2d) 1022 (C. C. A. 7th); *Chamberlain* v. *Commissioner*, 43 B. T. A. 259; *Gatens Investment Co.* v. *Commissioner*, 36 B. T. A. 309; *California Sanitary Co., Ltd.* v. *Commissioner*, 32 B. T. A. 122; *First Bond & Mortgage Co.* v. *Commissioner*, 27 B. T. A. 430.

Thus, the decision below, holding that respondents were entitled to deduct the real estate taxes although personal liability therefor had already accrued against the vendor before the sale and a lien existed at that time,* seems to be in clear conflict with *Lifson* v. *Commissioner,* 98 F. (2d) 508 (C. C. A. 8th), certiorari denied, 305 U. S. 662. There, the deduction was denied because a lien had attached prior to sale. Similarly, the opinions in *Commissioner* v. *Plestcheeff,* 100 F. (2d) 62 (C. C. A. 9th), and *Commissioner* v. *Coward,* 110 F. (2d) 725 (C. C. A. 3d), indicate that those courts are also in disagreement with the court below. In those cases it was assumed by the respective courts that the buyers of the properties would not have been allowed the deductions if tax liens had attached prior to the sales. See also *Commissioner* v. *Patrick Cudahy F. Co.,* 102 F. (2d) 930 (C. C. A. 7th); *Walsh-McGuire Co.* v. *Commissioner,* 97 F. (2d) 983 (C. C. A. 6th).

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*The District Court concluded that a lien had attached and personal liability had been imposed prior to passage of title. This has not been questioned by the respondents, and the Maryland statutes and decisions confirm it. Annotated Code of Maryland (Flack, 1939), Vol. 2, Art. 81, Sections 6, 46, 72, 76, and 154; *Free* v. *Greene,* 175 Md. 36; *Baltimore* v. *Perrin,* 178 Md. 101.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

FEBRUARY 1942.

APPENDIX

Revenue Act of 1936, c. 690, 49 Stat. 1648:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * *

(c) *Taxes Generally.*—Taxes paid or accrued within the taxable year, * * *.

* * * * *

SEC. 43. PERIOD FOR WHICH DEDUCTIONS AND CREDITS TAKEN.

The deductions and credits (other than the dividends paid credit provided in section 27) provided for in this title shall be taken for the taxable year in which "paid or accrued" or "paid or incurred," dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. In the case of the death of a taxpayer there shall be allowed as deductions and credits for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly allowable in respect of such period or a prior period.

Annotated Code of Maryland (Flack, 1939), Vol. 2, Art. 81:

6. The following property, except as in the next two succeeding sections provided, shall be subject to assessment to the owner and taxation for ordinary taxes in this

State and in the county and/or city specified below:

(1) All real properties in this State, by whomsoever owned, in the county and/or city in which the same are situated.

* * * * *

46. * * *

(b) All ordinary State taxes levied upon assessments made by the county commissioners or the Appeal Tax Court shall be payable on and after the first day of January of the year for which they are levied; provided that no collector in any county or in the City of Baltimore shall be required to receive payments of State taxes before the earliest date on which county or Baltimore City taxes falling due in such year may be payable; and all such State taxes not paid before the first day of October in such year shall thereafter carry interest at the rate of one-half of 1 per cent. for each month or portion of a month until paid.

* * * * *

72. All State, county and city taxes on real estate shall be liens on the real estate in respect of which they are levied from the date they become payable; provided that, except in Montgomery County, where two or more parcels of land are owned by and assessed to the same person or persons, one or more parcels may be sold for taxes upon all or any thereof, and from the date of the filing of the petition for the ratification of such sale by a circuit court, the taxes upon all of such parcels, for non-payment of which one or more of said parcels may be sold, shall be liens upon all the land so sold; and the proceeds of sale shall be distributed with reference to the priorities described by Section 150.

* * * * *

76. After the proceeding required by Section 74 or 75 shall have been had, if any taxes or assessment for state and/or county or Baltimore City purposes of any nature or kind whatsoever, levied or charged against any part or parcel of ground, improved or unimproved, held in freehold or by lease, shall not be paid within the thirty-day period after the service of notice required by Section 74 or 75, the Collector shall proceed within six months from the service of said notice to enforce payment of the same by distraint, levy, or execution upon said parcel of land of the party failing to pay, such levy, distraint, or execution to be made upon the premises and notice thereof to be given with a statement attached showing all taxes due, interest, penalties, and costs, including that of the levy, to the person so in arrears, or one of them, if more than one, if in possession of the property, otherwise to be conspicuously posted on the premises so to be sold for taxes. * * * The power under this section to sell real estate of a delinquent taxpayer for non-payment of taxes, State, county, or city, shall exist notwithstanding the existence of personal property of the delinquent. * * *

* * * * *

154. Any tax may be collected from the person liable under this Article to pay the same by action of *assumpsit* instituted at any time after said tax shall become due and payable, and within the period of limitations prescribed by this Article, and such suit may be maintained notwithstanding the existence of other remedies by way of sale of real estate, or otherwise.

Treasury Regulations 94, promulgated under the Revenue Act of 1936:

> ART. 23 (c)–1. *Taxes.*—Subject to the exceptions stated in this article and articles 23 (c)–2 and 23 (c)–3, taxes imposed by the United States, any State or Territory, or political subdivision of either, possessions of the United States, or foreign countries, are deductible from gross income for the year in which paid or accrued (see section 43). * * * In general taxes are deductible only by the person upon whom they are imposed. * * *

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